

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

11-31376 DM

In re:

HOWREY LLP,

Debtor.

Case No: C 13-02700 SBA

**ORDER ON BANKRUPTCY
APPEAL**

This case arises out of Howrey LLP's ("Howrey") dissolution and the movement of Howrey's partners to new law firms. Allan B. Diamond, the Chapter 11 bankruptcy trustee for Howrey ("the Trustee"), has filed multiple adversary proceedings against numerous law firms to recover profits from unfinished business that Howrey's partners brought with them to their new law firms under the theory that the profits were fraudulent transfers ("Unfinished Business Claims"). The Trustee has also sued numerous former partners of Howrey seeking to recover improper distributions from Howrey under various theories, including the theory that the distributions were fraudulent transfers ("Clawback Claims").

Appellant Haynes and Boone, LLC ("H&B"), one of the law firms sued by the Trustee, appeals an order issued by the bankruptcy court finding that the automatic stay under 11 U.S.C. § 362¹ applies to a state court declaratory relief action proposed by H&B. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby AFFIRMS the bankruptcy court's order, for the reasons stated below. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

¹ Unless otherwise specified, all further statutory references are to the Bankruptcy Code.

1 **I. BACKGROUND**²

2 Howrey was an international law firm with offices in, among other places,
3 Washington D.C., California, and Europe. Howrey dissolved effective March 15, 2011.
4 On April 11, 2011, an involuntary Chapter 7 bankruptcy was commenced when certain
5 creditors of Howrey filed a petition with the bankruptcy court. On June 11, 2011, the
6 bankruptcy court converted Howrey's bankruptcy into a Chapter 11 bankruptcy case. On
7 October 12, 2011, the bankruptcy court entered an order approving the appointment of the
8 Trustee.

9 In response to the Trustee threatening to file an adversary proceeding against it,
10 H&B filed a Motion for Order Confirming That The Automatic Stay Is Inapplicable, Or In
11 The Alternative, Granting Relief From The Automatic Stay ("motion for relief from stay").
12 H&B's motion sought confirmation from the bankruptcy court that the filing of a
13 "completely defensive" declaratory relief action against the Trustee in the District of
14 Columbia, which would seek a determination that former Howrey partners had no duty to
15 account to Howrey for unfinished business on hourly rate matters brought to their new
16 firms,³ would not violate the automatic stay. Alternatively, in the event the bankruptcy
17 court determined that the automatic stay applies, H&B sought an order from the bankruptcy
18 court lifting the automatic stay for cause under § 362(d).

19 Shortly after H&B filed its motion for relief from the automatic stay, the Trustee
20 commenced an adversary proceeding against H&B, alleging, among other things, that
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25 ² The parties are familiar with the background of this case. As such, the Court will
26 only recite the procedural history and facts relevant to the resolution of the appeal pending
before the Court.

27 ³ According to H&B, because there was no duty to account, the waiver of such a
28 duty (i.e., the "Jewel Waiver") by Howrey and its former partners was not a fraudulent
transfer as nothing of value was transferred.

1 Howrey's waiver⁴ of the duty of departing partners to account for unfinished hourly
2 business was a fraudulent transfer under § 548, and that H&B is liable under § 550. The
3 Trustee asserts that H&B is liable for profits earned on Howrey's unfinished business
4 because H&B is the entity that received the fraudulent transfers. More specifically, the
5 Trustee seeks to recover profits earned on two hourly matters brought to H&B from former
6 Howrey partner Richard Ripley. According to the Trustee, the profits H&B earned on these
7 matters must be remitted to Howrey for the benefit of its creditors.

8 Following a hearing, the bankruptcy court denied H&B's motion for relief from stay.
9 In denying the motion, the bankruptcy court concluded that the Trustee's Unfinished
10 Business Claim against H&B is property of the bankruptcy estate "protected" by the
11 automatic stay under § 362(a)(3). The bankruptcy court determined that H&B's
12 prosecution of its proposed declaratory relief action "would essentially be a defense more
13 properly asserted and adjudicated in the Trustee's adversary proceeding against [H&B],"
14 and that "prosecution elsewhere would be the exercise of control over property of the
15 estate." In reaching its conclusion, the bankruptcy court reasoned that "splitting the
16 Trustee's causes of action so that they are asserted [in the bankruptcy case] but defended
17 elsewhere interferes with and amounts to control of those causes of action." According to
18 the bankruptcy court, H&B's attempt to assert a potentially case-dispositive defense to the
19 Trustee's Unfinished Business Claim in another forum would be "an affirmative step to
20 thwart the Trustee's claims," amounting to "impermissible control" over property of the
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24 ⁴ Just before dissolution, Howrey's partners amended their partnership agreement to
25 adopt a so-called "Jewel Waiver," which provides that, in the event of dissolution, "neither
26 the Partners nor the Partnership shall have any claim or entitlement to clients, cases or
27 matters ongoing at the time of dissolution other than the entitlement for collections of
28 amounts due for work performed by the Partners and other Partnership personnel on behalf
of the Partnership prior to the earlier of their respective departure dates from the
Partnership or the date of dissolution of the Partnership." The Jewel Waiver is the transfer
that the Trustee contends was a fraudulent transfer that he can avoid in seeking to establish
H&B's liability under § 550.

1 bankruptcy estate.⁵ Finally, after analyzing the relevant factors, the bankruptcy court
 2 concluded that H&B had failed to demonstrate that “cause” exists for relief from the
 3 automatic stay under § 362(d).

4 H&B timely appealed the bankruptcy court’s order denying its motion for relief
 5 from stay. The Court now considers H&B’s appeal.

6 **II. JURISDICTION AND STANDARD OF REVIEW**

7 This Court has jurisdiction over the instant appeal under 28 U.S.C. § 158(a)(1).
 8 Section 158(a) provides, in relevant part: “The district courts of the United States shall
 9 have jurisdiction to hear appeals . . . from final judgments, orders, and decrees.” 28 U.S.C.
 10 § 158(a); see In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990) (“An order
 11 denying relief from a bankruptcy stay is appealable.”).

12 The court reviews the bankruptcy court’s legal conclusions de novo and findings of
 13 fact for clear error. In re Southern Cal. Plastics, Inc., 165 F.3d 1243, 1245 (9th Cir. 1999).
 14 The applicability of the automatic stay and exceptions thereto are questions of law that the
 15 Court considers de novo. Lockyer v. Mirant Corp., 398 F.3d 1098, 1107 (9th Cir. 2005)
 16 (citations omitted). Similarly, whether property is property of the estate is a question of
 17 law reviewed de novo. In re Hernandez, 483 B.R. 713, 719 (9th Cir. BAP 2012). De novo
 18 review means that review is independent, with no deference given to the bankruptcy court’s
 19 conclusions. See In re Onecast Media, Inc., 439 F.3d 558, 561 (9th Cir. 2006).

20 **III. DISCUSSION**

21 H&B frames the issue on appeal as follows: “Did the Bankruptcy Court err in
 22 concluding that the filing of a completely defensive declaratory judgment action by [H&B]
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26 ⁵ The bankruptcy court noted that this “problem could be exacerbated by the fact that
 27 [the] Trustee may be suing other law firms who acquired [Howrey’s] former partners who
 28 . . . ‘slippery slope’ that the Trustee is entitled to avoid by denial of the Motion.”

1 in a nonbankruptcy court would constitute an exercise of control over property of the
2 debtor's estate within the meaning of 11 U.S.C. § 362(a)(3)?⁶

3 **A. Automatic Stay**

4 When a bankruptcy petition is filed, an estate is automatically created that comprises
5 essentially all of the property owned by the debtor. See 11 U.S.C. § 541(a); In re
6 FitzSimmons, 725 F.2d 1208, 1210 (9th Cir. 1984). "This estate comprises the property
7 that will ultimately be available to satisfy the costs of bankruptcy administration and pay
8 off the claims of creditors, subject to the right of the debtor to declare some of the estate
9 exempt under 11 U.S.C. § 522(b)." In re FitzSimmons, 725 F.2d at 1210. Section 541 of
10 the Bankruptcy Code defines property of the bankruptcy estate as "all legal or equitable
11 interests of the debtor in property as of the commencement of the case." 11 U.S.C. §
12 541(a). The scope of this provision is broad and includes causes of action. United States v.
13 Whiting Pools, Inc., 462 U.S. 198, 205 n. 9 (1983); Sierra Switchboard Co. v.
14 Westinghouse Elec. Corp., 789 F.2d 705, 707 (9th Cir. 1986).

15 In conjunction with the creation of the bankruptcy estate, a stay is automatically
16 imposed against, among other things, "any act to obtain possession of property of the estate
17 or of property from the estate or to exercise control over property of the estate." See 11
18 U.S.C. § 362(a)(3). The automatic stay is designed to " 'protect debtors from all collection
19 efforts while they attempt to regain their financial footing.' " In re Nat'l Envtl. Waste
20 Corp., 129 F.3d 1052, 1054 (9th Cir. 1997). In addition, "the automatic stay allows the
21 bankruptcy court to centralize all disputes concerning property of the debtor's estate in the
22 bankruptcy court so that reorganization can proceed efficiently, unimpeded by
23 uncoordinated proceedings in other arenas." In re Ionosphere Clubs, Inc., 922 F.2d 984,
24 988 (2d Cir. 1990). The automatic stay prevents "piecemeal dismemberment" of the
25 bankruptcy estate. In re Palmdale Hills Property, LLC, 423 B.R. 655, 663 (9th Cir. BAP

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27 ⁶ H&B asserts that while it disagrees with the bankruptcy court's determination that
28 relief from the automatic stay under § 362(d) is not warranted, it does not challenge this
determination on appeal. As such, the Court will not address this issue.

2009). Actions taken in violation of the automatic stay are void. In re Nat'l Env'tl. Waste, 129 F.3d at 1054; see also In re Shamblin, 890 F.2d 123, 125 (9th Cir. 1989) ("Judicial proceedings in violation of [the] automatic stay are void."); In re Stringer, 847 F.2d 549, 551 (9th Cir. 1988) ("Any proceedings in violation of the automatic stay in bankruptcy are void.").

Aside from the limited exceptions set forth in § 362(b), "[t]he stay of section 362 is extremely broad in scope and . . . should apply to almost any type of formal or informal action against the debtor or property of the estate." In re Miller, 397 F.3d 726, 730-731 (9th Cir. 2005). While the automatic stay is broad in scope, "section 362(d) 'gives the bankruptcy court wide latitude in crafting relief from the automatic stay.'" In re Nat'l Env'tl. Waste, 129 F.3d at 1054. Specifically, the bankruptcy court may, "grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay." 11 U.S.C. § 362(d). A decision to lift the automatic stay under § 362 is within the discretion of the bankruptcy court. In re Kissinger, 72 F.3d 107, 108 (9th Cir. 1995).

B. Analysis

H&B contends that the bankruptcy court erred in concluding that the prosecution of its proposed declaratory relief action would violate the automatic stay. H&B argues that the bankruptcy court's determination "was error" for two independent reasons: "(1) the filing of a completely defensive declaratory action by a noncreditor in a nonbankruptcy forum is not an exercise of control over property of the estate within the meaning of section 362(a)(3), and (2) a noncreditor's action that merely has an effect on the bankruptcy estate does not exercise control over property of the estate." According to H&B, "although [the Trustee's] causes of action are assets of the estate and the subject matter of [its proposed declaratory relief action] could be relevant to one of [the Trustee's] causes of action, the [declaratory relief action] does not satisfy the terms of section 362(a)(3)."

Here, because H&B does not dispute that the Trustee's Unfinished Business Claim against it is the property of the bankruptcy estate, the issue is whether H&B's proposed declaratory relief action constitutes an "act . . . to exercise control over property of the

1 estate” within the meaning of § 362(a)(3). The Court concurs with the bankruptcy court’s
2 determination that the declaratory relief action proposed by H&B would violate the
3 automatic stay under § 362(a)(3). H&B’s proposed action would challenge the right of the
4 Trustee to recover the profits earned by H&B from Howrey’s unfinished business that was
5 brought to the firm by a former Howrey partner. H&B seeks to file an action in another
6 forum requesting a declaratory judgment regarding the merits of the Trustee’s Unfinished
7 Business Claim. The issues H&B seeks to raise in its proposed declaratory relief action can
8 be raised defensively in response to the Trustee’s adversary proceeding. By proposing to
9 file an action in another forum that would, if successful, amount to a case-dispositive
10 defense to the Trustee’s Unfinished Business Claim, H&B is attempting to exercise control
11 over property of the bankruptcy estate. See Securities Investor Protection Corp. v. Bernard
12 L. Madoff Inv., 460 B.R. 106, 114-115 (Bkrtcy. S.D.N.Y. 2011) (finding that by bringing
13 an action for a declaration of non-liability for any alleged preferential or fraudulent
14 transfers in a foreign court, the subsequent transferee, which was one of the subjects of an
15 avoidance complaint filed by Securities Investor Protection Act (SIPA) trustee, violated the
16 automatic stay by usurping causes of action belonging to the estate), aff’d 474 B.R. 76
17 (S.D.N.Y. 2012). H&B’s proposed action is “precisely” the type of activity that the
18 automatic stay was intended to prevent. See id. at 114 (noting that if the foreign action
19 were allowed to continue, “the Trustee will be required to expend duplicative time and
20 resources to essentially re-litigate the merits of [his] Avoidance Action in the [foreign
21 action].); see also In re Lickman, 297 B.R. 162, 170-171 (Bankr. M.D. Fla.2003) (finding
22 that debtor making telephone calls, writing letters, filing disciplinary complaints with The
23 Florida Bar, and seeking legal relief in Pennsylvania state and federal courts in order to
24 convince the trustee to release estate property violative of the stay because “[t]he stay
25 applies to attempts to obtain control over tangible and intangible property. It also protects
26 causes of action that are vested in the trustee.”) (internal citation and quotations omitted).

27 H&B, for its part, has not cited any authority demonstrating that the bankruptcy
28 court erred by concluding that H&B’s proposed declaratory relief action is subject to the

1 automatic stay under § 362(a)(3). The Court has reviewed the authority cited by H&B and
2 is not persuaded that reversal of the bankruptcy court's order is warranted. This Court, like
3 the bankruptcy court, is persuaded by the reasoning of the bankruptcy court's decision in
4 Securities Investor Protection, 460 B.R. at 114-115. Accordingly, the Court concludes that
5 the bankruptcy court did not err in denying H&B's motion for relief from stay.⁷

6 **IV. CONCLUSION**

7 For the reasons stated above, IT IS HEREBY ORDERED THAT:

8 1. The Court AFFIRMS the bankruptcy court's order denying H&B's motion
9 for relief from stay.

10 2. This Order terminates the instant action. The Clerk shall close the file and
11 terminate all pending matters.

12 IT IS SO ORDERED

13 Dated: 8/8/2014


SAUNDRA BROWN ARMSTRONG
United States District Judge

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27 ⁷ The Court will not address the Trustee's contention that § 362(a)(1) provides an
28 additional basis to affirm the bankruptcy court's order. The bankruptcy court did not
address the merits of this argument and the Court declines to do so in the first instance on
appeal.